HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.447 of 2006

Between:

Visakhapatnam Port Trust,
Rep., by its Chairman,
Visakhapatnam and another. … Appellants

And

G.V. Ramana Murthy … Respondent

::J U D G M E N T::

Counsel for the appellants : Sri P. Sri Raghu Ram

Counsel for the respondent : Smt. A. Padma

20th July, 2007

Per G.S. Singhvi, C.J.

This is an appeal for setting aside order dated 30-11-2005 passed by the learned Single Judge in Writ Petition No.21189 of 2003, whereby he directed the appellants to give the benefit of Assured Career Progression Scheme (for short, 'the Scheme') to respondent – G.V. Ramana Murthy along with consequential benefits.

The respondent was appointed as Store Assistant Grade-II in the services of Visakhapatnam Port Trust (VPT) on ad hoc basis with effect from 9-9-1974. He was regularly appointed on that post with effect from 3-12-1974. He was promoted as Store Assistant Grade-I with effect from 25-6-1978 and as Store In-charge on 26-3-1983 against the vacancies reserved for Scheduled Tribes. After some time, a departmental enquiry was instituted against the respondent on the

charge of having secured employment by producing false Scheduled Tribe community certificate. He denied the charge and claimed that he was initially appointed as Store Assistant Grade-II as a general category candidate and that he was promoted as Store Assistant Grade-I and Store In-charge on the basis of Secondary School Leaving Certificate and report dated 3-12-1981 given by Revenue Divisional Officer, Narsipatnam to the effect that his father was adopted by a tribal and his mother was a tribal woman. The enquiry officer found that the respondent had not produced false caste certificate for his initial appointment, but claimed promotion on the higher posts on the basis of such certificate. Accordingly, he submitted report with the finding that the charge levelled against the delinquent is partly proved. The disciplinary authority i.e. the Controller of Stores, VPT, disagreed with the enquiry officer and issued show cause notice to the respondent proposing his removal from service. The explanation submitted by the respondent was rejected by the disciplinary authority and he was removed from service vide order dated 1-12-1989. The appeal preferred by the respondent was dismissed by the Chairman, VPT vide his order dated 13-2-1992.

The respondent challenged his removal in Writ Petition No.3663 of 1992. The learned Single Judge held that the allegation of having secured appointment as Store Assistant Grade-II on the basis of false caste certificate cannot be treated as proved against the respondent because he had been appointed as a general category candidate. He observed that the disciplinary and appellate authorities have not assigned cogent reasons for discarding the finding recorded by the enquiry officer and felt that the issue relating to the quantum of punishment deserves to be re-considered by the disciplinary and appellate authorities. However, by taking note of the fact that the respondent had served VPT for 18 years and attained the age of 51 years, the learned Single Judge modified the punishment of removal from service and directed that the respondent should be treated as

Store Assistant Grade-II without the benefit of promotion. In other words, the punishment of removal from service was converted into that of reduction in rank from the post of Store In-charge to that of Store Assistant Grade-II. The concluding paragraph of order dated 3-12-1996 passed by the learned Single Judge reads as under:

> "Now coming to the punishment, Mr. Srinivas contended that the disciplinary authority as well as the appellate authority has proceeded on the assumption that the charge was totally proved, viz., that the petitioner secured initial appointment as well as subsequent two promotions which were reserved for S.T. candidates and though in view of the finding that the petitioner was initially appointed as Store Assistant Grade-II which is not against reserved quota, in the normal course, the matter has to be remitted to the disciplinary authority or appellate authority for determining appropriate punishment, as the matter is very old, the punishment may be reduced by this Court instead of remitting the matter to the authorities. He submitted that this Court can adopt such a course as this is not a case of upholding completely the order of the disciplinary authority as well as the appellate authority in which case, this Court cannot interfere with the punishment on the ground that it is disproportionate to the charge proved. I agree with the contention of the learned counsel for the petitioner. As the charge is partly proved, and keeping in view the petitioner's long service of 18 years and his age (51 years now), I am of the view that the interests of justice will be met if the punishment is reduced and accordingly the petitioner is directed to be reinstated into service as Store Assistant Grade-II forthwith without back wages but with continuity of service. It is made clear that the petitioner will not be entitled to claim benefits on the basis that he is S.T. candidate as long as the order of the Director of Tribal Welfare is subsisting. The writ petition is accordingly disposed."

The appellants did not challenge the aforementioned order and reinstated the respondent as Store Assistant Grade-II on 5-2-1997, but the respondent questioned the same in Writ Appeal No.294 of 1997, which was dismissed by the Division Bench on 12-6-1997.

After two years and six months of reinstatement of the respondent, the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training)

issued Office Memorandum dated 9-8-1999 for introduction of 'the Scheme' for the Central Government civilian employees. The same was made applicable to the employees of VPT with effect from 2-8-2000. The Scheme envisaged grant of two financial upgradations to Class-III and Class-IV employees on completion of 12 and 24 years of regular service subject to the condition that the employee did not receive regular promotion during these years. The respondent applied for grant of benefit under 'the Scheme' by asserting that he had completed more than 24 years service counted from 3-12-1974, but his claim was rejected on the premise that he had already availed two un-merited promotions as Store Assistant Grade-I and Store In-charge in the years 1978 and 1983 respectively.

Feeling aggrieved by the decision of the management of VPT, the respondent filed Writ Petition No.21189 of 2003 and prayed that the non-petitioners (the appellants herein) be directed to fix his seniority in the cadre of Store Assistant Grade-II by giving the benefit of continuity of service. He also prayed for issue of a direction to the appellants herein to give him two promotions.

In the counter filed on behalf of the appellants herein, it was averred that the petitioner is not entitled to two financial upgradations in terms of 'the Scheme' because he had already enjoyed two regular promotions within a short span of 8½ years. In paragraphs 11 and 12 of the affidavit filed by him, Sri Ch. Damodaram, Assistant Secretary, Materials Management Department, VPT, averred as under:

> "11. I submit that, however, on reinstatement into service from 5-12-1997 the pay of the petitioner was fixed in the post of Store Assistant Grade-II at the stage where he would have been entitled had he not been promoted and removed i.e. the pay he is entitled if he is continued as Store Assistant Grade-II from the date of his initial appointment without any promotion excluding the period of removal. Further, his retirement benefits are also being settled for the entire period of his service excluding the period of termination without any break in service.
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> 12. I submit that as seen from the above, this Hon'ble Court had directed reinstatement as in general category without back

wages. Hence, the writ petitioner has suffered disciplinary action which includes deprivation of back wages. The direction of this Hon'ble Court to appoint as if on general category was worked out as per the seniority of this category is concerned without violating any of the existing rules and discriminating the other members of the cadre in maintaining the reservation roster. The petitioner was given increments but not the promotions. According to the seniority fixed, he was not entitled for
any promotion. The specific direction of this Hon'ble Court by the learned Single Judge was to reinstate without back wages but with continuity of service. Accordingly, his seniority was fixed. Hence, there is no arbitrariness in the action of this respondent and there is no grievance made out by the petitioner. Hence, the writ petition does not survive and is liable to be dismissed."

The learned Single Judge held that in view of order dated 3-12-1996 passed in Writ Petition No.3663 1992, the petitioner can be treated only as Store Assistant Grade-II with effect from 3-12-1974 and the intermediary promotions earned by him as Store Assistant Grade-I and Store In-charge will be deemed to have been comprehensively eclipsed by the order of punishment, which was substantially confirmed by the Court. Accordingly, he directed that the benefit of financial upgradation be extended to the writ petitioner.

Sri P. Sri Raghu Ram, learned counsel for the appellants argued that the respondent was not entitled to claim benefit under 'the Scheme' because he had already earned promotions as Store Assistant Grade-I and Store In-charge with effect from 25-6-1978 and 26-3-1983 respectively and the learned Single Judge committed a serious error by directing the management of VPT to give him the benefit of two financial upgradations on completion of 12 and 24 years service counted from 3-12-1974. He submitted that the direction given in Writ Petition No.3663 of 1992 for reinstatement of the respondent did not have the effect of restoring his position in the cadre of Store Assistant Grade-II with retrospective effect and, therefore, he cannot be given the benefit of 'the Scheme' by ignoring the illegal promotions secured by him on the basis of false caste certificate.

Smt. A. Padma argued that the direction given by the learned Single Judge in Writ Petition No.3663 of 1992 for reinstatement of the respondent with continuity of service had the effect of restoration of his position in the cadre of Store Assistant Grade-II with effect from 3-12-1974 without the benefit of promotions on the posts of Store Assistant Grade-I and Store In-charge respectively and, therefore, he is entitled to the benefit of financial upgradation in terms of 'the Scheme'. Learned counsel submitted that once the respondent was reinstated as a Store Assistant Grade-II, he will be deemed to be continuing in that cadre with effect from 3-12-1974 and entitled to the benefit of 'the Scheme' with effect from the date of completion of 12 and 24 years service. She then argued that the respondent cannot be denied the benefit of 'the Scheme' on the premise that he had earned promotions as Store Assistant Grade-I and Store In-charge despite the fact that the same had been effectively nullified by the order of the learned Single Judge in Writ Petition No.3663 of 1992.

We have considered the respective arguments/submissions. A reading of order dated 3-12-1996 passed in Writ Petition No.3663 of 1992 shows that the learned Single Judge had virtually substituted the punishment of removal from service imposed on the respondent with that of reduction in rank and directed that he be reinstated as Store Assistant Grade-II with continuity of service, but without back wages. The order of the learned Single Judge was upheld by the Division Bench. Therefore, the promotions accorded to the respondent to the posts of Store Assistant Grade-I (1978) and Store In-charge (1983) will be deemed to have been effectively obliterated with retrospective effect and neither the respondent nor the management of VPT could rely on those promotions for any purpose whatsoever.

The Scheme, which was adopted by the management of VPT with effect from 2-8-2000, envisaged grant of two financial upgradations to Class-III and Class-IV employees on completion of 12 and 24 years service subject to the condition that the employee has

already not received promotion during these years. There is no dispute between the parties that as on 2-8-2000, the respondent had completed 24 years regular service. Therefore, once the promotions accorded to him 1978 and 1983 were obliterated/eclipsed by virtue of the order of removal from service, which, as mentioned above, was converted by this Court into that of reduction in rank, he cannot be treated ineligible for grant of financial upgradations from the date of completion of 12 and 24 years service.

The effect of an order of reinstatement with continuity of service, but without back wages was considered by this Court in **Managing Director, APSRTC, Kurnool Depot v. M. Sankaraiah**[1]. The Division Bench headed by P.V. Reddi, J. (the then Acting Chief Justice) held as under:

> "We cannot accept the contention of the learned counsel for the appellant that backwages having been denied to the respondent, the benefit of notional increments cannot also be given. It is not as if the learned single Judge directed any arrears for the past period to be paid. It is only a question of fixation of the salary at the appropriate scale after reinstatement and unless the Labour Court's order is clear, benefit of continuity of service cannot be restricted only to the computation of seniority or for pensionary benefits. The view taken by the learned single Judge is supported by the Division Bench decisions of this Court in Writ Appeal Nos.1060 of 1998, 1321 of 1997, 395 of 1996 and Writ petition No.11585 of 1988 and against the judgment in Writ Appeal No.
> 395 of 1996, SLP No. 20096 of 1996 preferred by the Corporation was dismissed. Hence, we are not inclined to admit the writ appeal. The writ appeal is dismissed at admission stage."

In **Depot Manager, APSRTC, Kurnool Depot v. S.S. Reddy Jamal Reddy**[2], another Division Bench of this Court held as under:

> "……..Thus the direction for reinstatement of the workman must be read in the aforementioned context that except the backwages and attendant benefits, he was entitled to all other benefits to which he became entitled to by way of his reinstatement without break in service. Having regard to the fact that all the attendant benefits have been clubbed with backwages, we have no

doubt in our mind that the learned single Judge while disposing of the writ application meant that not only the notional increments shall not be paid but other allowances to which the concerned workman is entitled to, had he worked during the said period, could not be allowed. But the same does not and cannot mean that the workman would not be entitled to the benefit of notional increments for the purpose of computation of his retiral and other terminal benefits, as also payment of his salary from the date of his reinstatement. If any other meaning is attributed, the same, in our opinion, would amount to double punishment, meaning thereby not only he becomes disentitled from receiving backwages and attendant benefits but also reduction in his salary, which is not contemplated under the statute."

The propositions laid down in the above noted judgments were reiterated and approved in **APSRTC, Khammam Region, Khammam v. P. Nageswara Rao**[3].

In our opinion, the ratio of the above noted judgments is clearly attracted in the present case. Therefore, we hold that the learned Single Judge did not commit any error by accepting the claim of the respondent and the appeal is liable to be dismissed. Ordered accordingly.

As a sequel to dismissal of the appeal, WAMP.No.988 of 2006 filed by the appellants for interim relief is dismissed and WAVMP.No.29 of 2007 filed by the respondent for vacating the interim order is disposed of as infructuous.

G.S. SINGHVI, C.J.

20th July, 2007.

C.V. NAGARJUNA REDDY, J.

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[1] 1999 (4) ALT 89

[2] 2001 (2) ALD 92

[3] 2001 (4) ALD 568